

## Office of the Secretary, Interior

## §4.203

or federal law that affects the distribution of the decedent's estate is applied to:

- (1) Determine the heirs,
- (2) Approve wills and determine beneficiaries, and
- (3) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities.

*Probate specialist* means a BIA or tribal employee who is trained in Indian probate matters.

*Restricted property* means real or personal property held by an Indian which he or she cannot alienate or encumber without the consent of the Secretary or his or her authorized representative. In this subpart, restricted property is treated as if it were trust property. Except with respect to §4.200, the term "restricted property" as used in this subpart does not include the restricted lands of the Five Civilized Tribes or Osage Tribe of Indians.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Solicitor* means the Solicitor of the Department of the Interior or his or her authorized representative.

*Superintendent* means the BIA Superintendent or other BIA officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority.

*Testate* means the decedent executed a will before his or her death.

*Trust property* means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

*Will or last will and testament* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

### §4.202 General authority of OHA deciding officials.

An OHA deciding official will, except as otherwise provided in §4.205(b) and 25 CFR 15.203 and 15.206, determine the heirs of any Indian who dies intestate possessed of trust property; approve or

disapprove the will of a deceased Indian disposing of trust property; accept or reject any full or partial renunciation of interest in both testate and intestate proceedings; allow or disallow creditors' claims against the estate of a deceased Indian; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. An OHA deciding official will determine the right of a tribe to take any inherited interest and the fair market value of the interest taken in appropriate cases as provided by statute. He or she will review each case de novo, hold hearings as necessary or appropriate, and issue decisions in matters appealed from decisions of BIA deciding officials. Administrative law judges will also hold hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of BIA officials.

### DETERMINATION OF HEIRS; APPROVAL OF WILLS; SETTLEMENT OF INDIAN TRUST ESTATES

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

### §4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) An OHA deciding official will hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an OHA deciding official determines under paragraph (a) of this section that a trust patent issued to an existing person and/or that separate persons received the allotments under consideration and any one of them is deceased, without having had his or her estate probated, the OHA deciding official must proceed as provided in §4.202.